



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,816	04/02/2004	Jeffrey A. Alvey	010564/00030	9335

25223 7590 06/14/2005

WHITEFORD, TAYLOR & PRESTON, LLP
ATTN: GREGORY M STONE
SEVEN SAINT PAUL STREET
BALTIMORE, MD 21202-1626

EXAMINER

LEWIS, AARON J

ART UNIT	PAPER NUMBER
----------	--------------

3743

DATE MAILED: 06/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/815,816

Applicant(s)

ALVEY, JEFFREY A.

Examiner

AARON J. LEWIS

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-6 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6,8-24 of copending Application No. 10/393,346. Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between claim 1 of the instant application and claim 1 of application ('346) lies in the fact that claim 1 of the ('346) application more elements and is thus more specific (e.g. claim 1 of application ('346) recites the following additional elements: "electrically powered means adapted to move said ambient air"; separately recited first second and third conduits; sensor means and means operatively associated with said sensor means adapted to generate a signal that is adapted to advise a user whether said gas emerging from said filter system has insufficient oxygen to be safely breathable; and means to, in response to said signal, open and/or close said at least one valve). Thus the invention of claim 1

of the ('346) application is in effect a "species" of the "generic" invention of claim 1 of the instant invention. It has been held that the generic invention is "anticipated" by the "species". See *In re Goodman*, 29USPQ2d 2010 (Fed. Cir. 1993). Since claim 1 of the instant application is anticipated by claim 1 of application ('346), it is not patentably distinct from claim 1 of application ('346).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

3. Claims 1-6 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,3-19 of copending Application No. 10/933,555. Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between claim 1 of the instant application and claim 1 of application ('555) lies in the fact that claim 1 of the ('555) application more elements and is thus more specific (e.g. claim 1 of application ('555) recites the following additional elements: a sensor adapted to determine whether air emerging from said filter system is safely breathable and a signal generator operatively associated with said sensor, adapted to generate a signal indicative of whether said air emerging from said filter system is safely breathable; and a controller to open and/or close said valve in response to said signal). Thus the invention of claim 1 of the ('555) application is in effect a "species" of the "generic" invention of claim 1 of the instant invention. It has been held that the generic invention is "anticipated" by the "species". See *In re Goodman*, 29USPQ2d 2010 (Fed. Cir. 1993).

Since claim 1 of the instant application is anticipated by claim 1 of application ('555), it is not patentably distinct from claim 1 of application ('555).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

4. Claims 1-6 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4,6-16 of copending Application No. 10/675,135. Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between claim 1 of the instant application and claim 1 of application ('135) lies in the fact that claim 1 of the ('135) application more elements and is thus more specific (e.g. claim 1 of application ('135) recites the following additional elements: a switch associated with the means to move and coupled to the valve assembly adapted to control energization of the moving means in conjunction with operation of the valve assembly). Thus the invention of claim 1 of the ('135) application is in effect a "species" of the "generic" invention of claim 1 of the instant invention. It has been held that the generic invention is "anticipated" by the "species". See *In re Goodman*, 29USPQ2d 2010 (Fed. Cir. 1993). Since claim 1 of the instant application is anticipated by claim 1 of application ('135), it is not patentably distinct from claim 1 of application ('135).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1,3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bartels & Riger (DE 3512644A1) in view of Hubner ('518).

As to claim 1, Bartels & Riger discloses a breathing apparatus comprising: a tank (11) adapted to contain air under pressure operatively associated with regulator means (15) to enable delivery of said pressurized air to a user of said apparatus; a filter/canister system (21) adapted to enable ambient air to pass through a filter medium having a mesh that is sufficient to trap solid particles in ambient air and/or to enable ambient air in need of cleaning to have a residence time in contact with media that is sufficient to decontaminate contaminating vapors and gases from said ambient air to form clean air; valve assembly means (19,191) operatively associated with said filter system and said tank that is adapted to control the flow of cleaned air from said filter system and fresh air from said pressure tank, such that a user can determine whether to breath cleaned air or pressurized air; and conduit means (see conduit between user interface #20 and valve #19) disposed between, and in operative association with, said means to move said ambient air and means directly associated with the user of said apparatus through which air is provided to a user of said apparatus.

Art Unit: 3743

The difference between Bartels & Riger and claim 1 is means adapted to move said ambient air into said filter system, through said filter medium in said filter system and thence into operative relationship with a user of the apparatus.

Hubner, in a breathing apparatus, teaches a blower (1,4-6) adapted to move said ambient air into said filter system, through said filter medium in said filter system and into operative relationship with a user of the apparatus for the purpose of overcoming fluid flow resistance of the filter medium thereby relieving a user from having to expend an inordinate amount of energy in an effort to draw breathable air through the filter medium (col.7, lines 25-32).

It would have been obvious to modify the breathing apparatus of Bartels & Rieger to include a blower to move ambient air through the filter medium because it would have overcome the fluid flow resistance of the filter medium thereby relieving a user from having to expend an inordinate amount of energy in an effort to draw breathable air through the filter medium as taught by Hubner. As to the recited intended result of "such that a user can determine whether to breathe cleaned air or pressurized air", Hubner also teaches a sensor (7, 7a-7e) adapted to determine whether air emerging from said filter system is safely breathable; and a signal generator (11-13) operatively associated with said sensor, adapted to generate a signal indicative of whether said air emerging from said filter system is safely breathable (col.1, lines 55-68; col.4, lines 38-50).

As to claim 3, said facemask of Bartels (see abstract) is adapted to establish and maintain a seal with the face of said user so as to isolate at least the nose and mouth

of said user from ambient air, and adapted to maintain said seal under conditions of positive pressure within said facemask inasmuch as it is intended for use by firefighters.

As to claim 4, Bartels & Rieger (see figure) discloses a first conduit means between said tank (11) and said face mask (see abstract), second conduit means between said filter/decontamination means (21) and said face mask, and valving means (19,191) operatively associate with said conduit means adapted to control the flow of cleaned air from said filter/decontamination means or air from said tank to said user.

As to claim 5, the junction between conduit (20) at valve (19) where the first and second conduits of Bartels & Rieger come together is readable upon a plenum chamber.

7. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bartels & Riger as applied to claims 1,3-5 above, and further in view of O'Connor ('951).

The difference between Bartels & Rieger as modified by Hubner and claim 2 is plural filter/decontamination elements.

O'Connor, in a breathing apparatus, teaches plural filter/decontamination elements (11 and col.3, lines 30-42) for the purpose of increasing the filtering efficiency of the breathing device.

It would have been obvious to further modify the filter/decontamination element of Bartels & Rieger to include plural filter/decontamination elements because it would have increased the filtering efficiency of the breathing device as taught by O'Connor.

8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bartels & Rieger as applied to claims 1,3-5 above, and further in view of Hilton et al. (EP 0 241 188A1).

The difference between Bartels & Rieger as modified by Hubner and claim 6 is a one way exhaust valve means associated with the face mask.

Hilton et al., in a breathing apparatus, teach a one way exhaust valve means (4) associated with the face mask for the purpose of venting exhaled gases within the face mask to the ambient without compromising the seal between the face mask and a wearer's face while working in a noxious environment (page 3, col.4, lines 14-18).

It would have been obvious to modify the face mask of Bartels & Rieger to include a one way exhaust valve means associated therewith because it would have provided a means for venting exhaled gases within the face mask to the ambient without compromising the seal between the face mask and a wearer's face while working in a noxious environment as taught by Hilton et al..

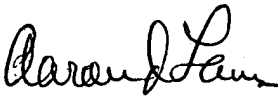
Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of the art is cited to show relevant breathing devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON J. LEWIS whose telephone number is (571) 272-4795. The examiner can normally be reached on 9:30AM-6:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HENRY A. BENNETT can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


AARON J. LEWIS
Primary Examiner
Art Unit 3743

Aaron J. Lewis
June 11, 2005